

ASPERGER ASSOCIATES LLC

ATTORNEYS AT LAW

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Via Electronic Filing and U.S. Mail

The Honorable Benson E. Legg
United States District Court
for the District of Maryland
Third Floor, Room 340
101 W. Lombard Street
Baltimore, MD 21201

Re: *In the Matter of the Complaint of Eternity Shipping, Ltd., et al,*
For Exoneration from or Limitation of Liability
Civil Action No.: L-01-CV-0250

Dear Judge Legg:

I have received your Memorandum Opinion dated August 3, 2006, regarding the motions for summary judgment filed by American Bureau of Shipping, Limitation Plaintiffs and Tate & Lyle North American Sugars, Inc. I wish to point out at this time that a finding of fact was made which is inconsistent with the uncontradicted evidence. This finding does not affect the Court's ruling regarding the summary judgment motions but is material to the pending claims by Tate & Lyle against Limitation Plaintiffs. This finding is related to the bypassing of the upper and lower limit switches by the crane operator.

Specifically, the Memorandum finds that Bosun Balita had a key that enabled him to neutralize *both* the upper and lower limit switches. (Court's Memorandum at Page 16). Although the cranes were equipped with a key which would permit the operator, from the crane cab, to bypass the lower limit switch in order to lower the cranes into their cradles to secure them for sailing, the key did not allow the operator (here Bosun Balita) to bypass the upper limit switch.

According to the record, the upper limit switch could only be set by means of a set screw, requiring mechanical adjustment in a machinery box not normally accessible to the crane operator. The ship's electrician confirmed that there was in fact a key to bypass the lower limit switch to place the jib in the rest position, but this key would not allow the operator to take the jib higher than the limit setting on the worm gear in the machinery box. (Eugeniusz Warlinski Deposition, pp. 48-49, 104). At minimum therefore, there is a question of fact whether the crane operator was able to bypass the upper limit switch from the operator's cab, or for that matter, at any time. Indeed, in the

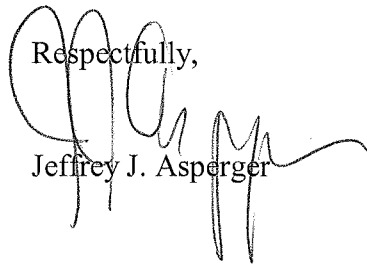
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Memorandum Opinion, the Court noted specifically that there was no evidence presented as to whether Bosun Balita took any action to bypass the upper limit switch.

In light of the fact that the Court underscored the significance of this issue by noting that it will likely be an area of contention at trial, I request that the record be corrected and invite the Limitation Plaintiffs to advise the Court if they believe there is evidence to the contrary.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jeffrey J. Asperger', with a long horizontal flourish extending to the right.

Jeffrey J. Asperger

JJA:dmw

cc: All Counsel via E-mail only